

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STEVEN J. ABRAHAM, et al.,

Plaintiffs,

vs.

No. CIV 09-961 WDS/RLP

BP AMERICA PRODUCTION COMPANY,

Defendant.

**ORDER GRANTING MOTION FOR LEAVE
TO CONDUCT TRIAL DEPOSITION**

THIS MATTER comes before the Court on Defendant's Motion to Conduct Trial Deposition filed January 20, 2011. [Doc. 197] The Court, having read the parties' briefs and being otherwise fully advised, finds that the motion is well taken and should be granted in part. The Court notes that one aspect of the motion, whether the MAR-BP documents constitute "business records" under Fed. R. Evid. 803(6), has been conceded in the Plaintiffs' response and is therefore GRANTED. The remaining issue involves Exhibit G to Defendant's motion. Defendant asks the Court to either declare the document admissible or grant leave to depose Mr. Michael Smith to establish a foundation for admissibility. The Court declines to rule on the admissibility of the document at this time, but GRANTS leave for the parties to depose Mr. Smith. The Court declines to preemptively rule on, or manage, the scope or breadth of the deposition. It is the responsibility of the parties to establish the necessary foundation for evidence that they seek to admit at trial.

IT IS SO ORDERED.



W. DANIEL SCHNEIDER
UNITED STATES MAGISTRATE JUDGE